

OFFICIAL INFORMATIONCONFIDENTIAL**EVIDENCE CODE SECTION 1040
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: June 7, 2020

TO: Honorable Board of Police Commissioners

FROM: Inspector General

SUBJECT: NON-TACTICAL UNINTENTIONAL DISCHARGE 040-19 FOR 6/16/20
CLOSED-SESSION AGENDA

<u>Division</u>	<u>Date</u>	<u>Time</u>	<u>Duty-On () Off (X)</u>	<u>Uniform-Yes () No (X)</u>
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Outside City	8/17/19	12:50 p.m.		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Moreno, J./PO I	1 years, 2 months
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Total Involved Officer(s)

1 x PO I

<u>Suspect</u>	<u>Deceased () Wounded () Non-Hit ()</u>
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Does not apply.

COP Recommendations

Tactics – Tactical Debrief, Officer Moreno.

Drawing/Exhibiting – Does not apply.

Unintentional Discharge – Administrative Disapproval, Negligent Discharge, Officer Moreno.

IG Recommendations

Tactics – Same as COP.

Drawing/Exhibiting – Does not apply.

Unintentional Discharge – Same as COP.

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INVESTIGATION

Annotated Force Investigation Division (FID) Incident Summary¹

Investigative Summary

On Saturday, August 17, 2019, at approximately 1250 hours, 77th Patrol Division Police Officer I Jonathan Moreno, Serial No. 43614, was off duty and inside the living room of his one-bedroom condominium, located at 2150 State College Boulevard, unit No. 3079, in the city of Anaheim.² Witness Oralia Moreno, Officer Moreno's wife, was also in the living room. She was seated on the floor in front of the mirror at the north side of the living room, approximately seven feet north of Officer Moreno.

Officer Moreno brought his back-up service revolver home with the intention to clean the dust and debris with a microfiber cloth.

Note: According to Officer Moreno, he had not taken his back-up service revolver home, nor cleaned it, since graduating from the Police Academy in November 2018.

Officer Moreno was standing, facing east, between his couch and kitchen counter. Prior to retrieving his cleaning equipment, Officer Moreno decided to practice dry fire exercises with his revolver. Officer Moreno retrieved his Department-approved Smith & Wesson Model 422, .38 caliber revolver from his backpack on the floor of his bedroom and removed the revolver from its pocket holster.

Note: Officer Moreno advised he does not have any children, and only lives at the location with his wife.

With the muzzle of the revolver pointed toward the ground, Officer Moreno held the revolver with his right hand and used his right thumb to push the cylinder release button, located on the left side of the revolver, disengaging the cylinder from the revolver. Once the cylinder disengaged to the left side of the revolver frame, Officer Moreno placed his left hand under the open cylinder and used his left index finger to depress the ejector rod, releasing the live rounds into his left hand. Officer Moreno did not count the live rounds and placed them on top of the kitchen counter directly behind him. Officer Moreno then used his left-hand thumb to close the cylinder.

¹ The Incident Summary presented here is reproduced from FID's report regarding this case, and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

² Officer Moreno and his wife, who do not have children, are the sole residents.

Note: According to Officer Moreno, "I then after I did a quick check of the cylinder, I did see the cylinder is like -- I could see light through them and then that's when I -- I close it..."³

Officer Moreno held his revolver with two hands in a standing shooting position. He raised his revolver and pointed it in the direction of the vertical blinds covering the sliding glass doors, which led to an exterior patio. According to Officer Moreno, "I wasn't aiming the gun towards anything. Well, I wasn't focusing my sights on a specific target on the blinds or anything like that."⁴ Officer Moreno placed his finger on the trigger and pressed it to, "dry fire", Officer Moreno conducted two dry fire presses of the trigger. Officer Moreno stated, "I always tend to do a few rounds of dry -- dry pressing and pointing the gun in a direction where no one is at risk of any negligent discharge if that would ever happen."⁵

Note: According to Officer Moreno, he conducts dry trigger press exercises approximately three times per week, on his days off. However, Officer Moreno stated that he usually practices with his semi-automatic service pistol and this is the first time that he practiced with his back-up revolver.

Witness Oralia Moreno stated that Officer Moreno would normally conduct dry trigger press exercises with his empty duty pistol for a period of five to ten minutes in the living room on his days off.

According to Officer Moreno, believing his revolver was still unloaded, he placed his finger on the trigger and pressed it a third time, which caused the revolver to discharge a round.

Officer Moreno opened the cylinder of his revolver and observed a .38 caliber casing inside the cylinder. Officer Moreno removed the spent casing and placed it on top of the kitchen counter with the live rounds, which had previously been removed. He then placed his revolver with the cylinder open on top of the kitchen counter.

According to Witness Oralia Moreno, she was seated facing north, looking in the mirror to apply makeup, when she heard a shot. She immediately turned around and observed Officer Moreno facing east, holding his gun. According to Witness

³ Moreno, Page 17, Lines 21-24.

⁴ *Id.*, Page 23, Lines 2-5.

⁵ *Id.*, Page 15, Lines 6-9.

Oralia Moreno, Officer Moreno then placed the revolver on the kitchen counter. Officer Moreno then stated to her that he had thought the gun empty when he fired. Officer Moreno telephoned 77th Area Watch Commander Sergeant II Andre Plummer, Serial No. 33575, and advised him that he had a negligent discharge with his firearm. Sergeant Plummer advised Officer Moreno to contact his local police agency and that a 77th Area supervisor would respond to his residence.

Note: According to Sergeant Plummer's watch commander log, Officer Moreno stated that he was cleaning his firearm at the time of the NTUD. According to Officer Moreno, he stated to Sergeant Plummer that he was clearing his gun at the time of the NTUD.

Officer Moreno made a second telephone call to the Anaheim Police Department (APD) and informed them that he was an off-duty Los Angeles Police Department (LAPD) officer who had an accidental discharge with his firearm.

Officer Moreno then made a third telephone call to his building manager to report the damage to his sliding glass door. According to Officer Moreno, the manager of the complex, who is known to him as Donna, arrived at the residence, verified the damage to the glass and took one photograph prior to APD arrival. On August 21, 2019, Detective Kim requested to interview with the manager, who would only provide a first name of Donna. Donna refused to grant an interview or comment on the incident, citing tenant confidentiality.

At approximately 1310 hours, Anaheim Police Department Officers Conrado Curiel, David Wolfe, Ryan Lee and Sergeant Michael Lee responded and conducted an investigation.

Anaheim Police Department determined through their investigation that there was no evidence of criminal activity and held the scene and monitored the Morenos until Force Investigation Division (FID) investigators' arrival. Their investigation was memorialized in their Incident Report No. 2019-120654, and consistent with an accidental discharge.

Note: According to Sergeant Lee, he obtained a Public Safety Statement from Officer Moreno in the hallway outside the residence. According to Officer Moreno, he was not asked specific questions pertaining to the direction of the shot by APD. Sergeant Lee's Body Worn Video (BWV) captured Sergeant Lee and Officer Moreno speaking for a period of approximately 45 seconds at approximately 1350 hours. The BWV audio was turned off during this time.

FID Detectives II Jennifer Kim, Serial No. 36639, Brad Michel, Serial No. 36742, and Detective III Jim Goossen, Serial No. 26464, responded to the scene. Detective Kim was the first LAPD personnel to arrive, reviewed the circumstances surrounding the

supervisor monitoring by APD and admonished Officer Moreno not to discuss the incident with anyone prior to an interview with FID detectives.

Technical Investigation Division (TID) Photographer III Henry Wang, Serial No. N5698, responded and photographed the scene, evidence collected, and the involved officer.

Detective Goossen assisted with the post firearm discharge examination and ordered Officer Moreno to transport his revolver to the Department armory for test fire on his next working day. Detective Goossen also conducted a canvass of the area for witnesses and completed one heard only report. Detectives Kim and Michel processed and collected the spent cartridge case at scene. The evidence recovered was documented on a property report under DR No. 19-9929332.

The investigation established that Officer Moreno fired a single round, which traveled east in an upward trajectory through the vertical blinds, sliding glass door and impacted the stucco overhang of the balcony. The physical inspection of his revolver and ammunition was consistent with the discharged cartridge case collected at scene. No fired bullet or bullet fragment was recovered from the scene.

OIG Note No. 1: Upon arrival at the scene, and prior to making contact with Officer Moreno, APD police officers contacted neighbors in the area to obtain any additional information regarding the call. One neighbor heard a possible shot, but none reported hearing any arguing, struggling, or other concerning behavior. After ensuring the situation was stable, APD officers conducted a preliminary investigation by separating Officer Moreno and his wife. Both of them independently confirmed that the discharge was accidental and that neither domestic violence (DV) nor intoxication were factors in the incident.

An APD supervisor on scene also indicated that he saw no indications of DV or intoxication in reference to Officer Moreno and his wife, and that both of them were cooperative. FID investigators asked questions of Officer Moreno and his wife during their recorded interviews regarding any current or past instances of DV and/or any drug or alcohol consumption within the previous 24 hours. No incidents of DV were identified during the Morenos' marriage of more than six years, nor was any drug and/or alcohol usage identified within the previous 24 hours.⁶

⁶ Refer to APD police report and interview transcripts, as well as transcribed statements of Officer Moreno and witness Oralía Moreno.

CHIEF OF POLICE REPORT⁷

Chief of Police Findings

- The Chief recommended the following findings in this case:

Tactics – Tactical Debrief, Officer Moreno.

Drawing/Exhibiting – Does Not Apply.

Unintentional Discharge – Administrative Disapproval, Negligent Discharge, Officer Moreno.

Chief of Police Analysis

Detention

- Does not apply.

Tactics

- Department policy relative to a Tactical Debrief is: *“The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance” (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

Officer Moreno’s tactics were not a factor in this incident, therefore, they were not reviewed or evaluated. However, as Department guidelines require personnel who are substantially involved in a Categorical Use of Force incident to attend a Tactical Debrief, the Chief determined that it would be appropriate to recommend a Tactics finding of Tactical Debrief.⁸

During the review of this incident, the following Debriefing Point was noted:

- Firearms Manipulations – Four Basic Firearm Safety Rules

Additional Tactical Debrief Topics

- **Preservation of Evidence** – The investigation revealed that immediately following the NTUD, Officer Moreno opened the cylinder of his service revolver and removed the spent casing. Officer Moreno is reminded of the importance of maintaining the

⁷ The information provided in this section summarizes the analysis and findings set forth in the Chief of Police’s report for this case.

⁸ A Tactical Debrief shall be conducted for all CUOF incidents within 90 calendar days of the conclusion of the BOPC review process. *LAPD Department Manual, Volume 3, Section 792.15.*

integrity of evidence following a critical incident. The Chief will direct that this topic be discussed during the Tactical Debrief.

- **Maintaining the Integrity of the Crime Scene** - Prior to the arrival of officers from the Anaheim Police Department, the apartment property manager, identified as “Donna,” arrived at Officer Moreno’s residence to take pictures of the damaged sliding glass door for purposes of reporting and requesting a repair. Officer Moreno stated that he allowed Donna inside of his residence where she stood in the living room and took one photo of the vertical blinds and the shattered glass. The preservation of and limitation of access to crime scenes is an important aspect of maintaining the integrity of the crime scene. The Chief will direct that this topic be discussed during the Tactical Debrief.
- **Maintenance of Firearms** – Officer Moreno stated that he had not cleaned his service revolver since graduating from the police academy in November 2018.⁹ The revolver was inspected at the Davis Training Facility armory and was found to be in good working order and met all Department specifications. To enhance future performance, the Chief will direct that this topic be discussed during the Tactical Debrief.
- **Storage of Firearms (Home Safety)** – Officer Moreno stated that he and Oralia do not have children residing in the home, but family members with children visit them on occasion. Officer Moreno stated that he leaves his service pistol in his bedroom nightstand at times and when stored at home, does not utilize his gun safety locks.¹⁰ Although in this specific circumstance Officer Moreno is not required to store his service pistol with a safety lock installed, in order to enhance future performance, the Chief will direct that this topic be discussed during the Tactical Debrief.

Tactical De-Escalation

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

Tactical De-Escalation Techniques

- *Planning*
- *Assessment*

⁹ Los Angeles Police Department Manual, Volume 3, Section 610.40, Maintenance of Firearms states, “Firearms carried on-duty shall be maintained in a clean, serviceable condition.”

¹⁰ Los Angeles Police Department Basic Firearms Manual, July 2015, Page 3, “Home Safety” section states, “Special care and consideration must be exercised when possessing and storing a firearm to prevent a potentially tragic situation from occurring.”

- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques).*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, Officer Moreno was off duty, inside of his residence at the time of this incident, and he was not engaged in any tactical operations. Therefore, Officer Moreno was not evaluated for Tactical De-escalation.

Command and Control

- *Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (LAPD, Training Bulletin, Volume XLVII Issue 4, July 2018).

Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Supervisor's Field Operations Guide, Volume 2, LAPD Emergency Operations Guide).

The investigation revealed that Sergeant Lee from the Anaheim Police Department responded to the scene of this incident, obtained a PSS from Officer Moreno, and monitored Officer Moreno until the arrival of a LAPD supervisor.

Detective Kim was the first LAPD supervisor to arrive. Detective Kim reviewed the circumstances surrounding the supervisor monitoring of Officer Moreno by Anaheim Police Department, admonished Officer Moreno not to discuss the incident further until his representation arrived and verified that the evidence left at the scene was left undisturbed.

Lieutenant Odle arrived at scene, made notifications, and monitored the investigation.

The actions of Detective Kim and Lieutenant Odle were consistent with Department supervisory training and the Chief's expectations of Department supervisors following a critical incident.

Tactical Debrief

- Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made. A Tactical Debrief is the appropriate forum for involved personnel to discuss individual actions that took place during this incident.

The Chief will direct Officer Moreno to attend a Tactical Debrief that shall include discussions pertaining to the Debriefing Topics along with the following mandatory topics:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

General Training Update (GTU)

- On August 29, 2019, Officer Moreno attended a GTU. All mandatory topics were covered, including Firearm Manipulations.

Unintentional Discharge

Firearms safety is critical. Officers must have the ability to draw, holster and manipulate weapons safely at all times, especially under stressful conditions. Firearms safety rules have been established based upon real life situations and are applicable at all times. Violations of any of the safety rules will not be tolerated.

The Four Basic Firearm Safety Rules

1. *All guns are always loaded.*
2. *Never allow the muzzle to cover anything you are not willing to shoot.*
3. *Keep your finger off the trigger until your sights are aligned on the target and you intend to shoot.*
4. *Be sure of your target.*

Officers are required to know and apply the Four Basic Firearm Safety Rules throughout their careers. These rules must be ingrained into an officer's natural thought process and become second nature. Any violation of the Four Basic Firearm Safety Rules may result in the unintentional discharge of a round. This is a serious matter with the potential of having tragic results. For administrative purposes, the unintended discharge of a weapon is classified into two categories:

Accidental discharge: An unintended discharge of a firearm as a result of a mechanical malfunction of the firearm, not involving the shooter.

Negligent discharge: An unintended discharge of a firearm as a result of a shooter not handling a weapon in a safe manner, violating one or more of the four basic firearm safety rules (Los Angeles Police Department Firearms Manual, July 2015).

Administrative Disapproval - Negligent Discharge. *Finding where it was determined that the unintentional discharge of a firearm resulted from operator error, such as the violation of a firearm safety rule (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

Officer Moreno – .38 caliber, revolver, single round which traveled east in an upward trajectory and impacted the exterior balcony overhang.

According to Officer Moreno, his intent was to conduct a few dry fire presses prior to cleaning his revolver to maintain his accuracy. Officer Moreno had not cleaned his revolver since he had graduated from the police academy, and he had observed some lint on his revolver because he kept the revolver in his pants pocket when working. Standing in front of the kitchen counter, Officer Moreno removed the revolver from the holster and placed the holster down on the counter. Officer Moreno disengaged the cylinder from the revolver and believed he had ejected all five live rounds. Officer Moreno did a quick visual check of the cylinder and could see light through the cylinder. Officer Moreno did not count the live rounds and placed the live rounds on top of the kitchen counter directly behind him, by his holster. Officer Moreno closed the cylinder and pointed the gun towards the east with two hands in a standing shooting position. His revolver was pointed east in the direction of the window. Officer Moreno then pressed the trigger twice without consequence. Officer Moreno pressed the revolver's trigger a third time and the revolver went off, causing a round to discharge.

Officer Moreno recalled, *"Honestly, I was just focused on trying to do a few dry presses and then proceed to attempt to clean my revolver since I haven't -- I've had it at the station, you know, since I started -- since I graduated the academy. And I just wanted to clean it out because I observed there was some lint on the -- on the gun due to it being in my pocket. So, the plan was just to clean it out really quick and then get ready to go to a birthday party we had been invited to in Moreno Valley."*¹¹

*"They taught us... when you are not actively going to a shooting range ... your firearm is a perishable skill... your accuracy can decrease ... they advise you to, you know, when at home and in a safe place away from people to do a few rounds of dry pressing."*¹²

*"I took the cylinder out of the revolver. From there I went to remove the -- the live ammo that I had inside of the -- the revolver and I dropped them into my left hand. From there I thought I had retrieved all five live ammos that I had inside of the revolver and I set the ammo down. From there I closed the cylinder and I faced -- I pointed the gun and faced my body towards the -- the east side of the apartment where the broken glass is at. From there I proceeded to do what I normally do when I unload all my firearms. I always tend to do a few rounds of dry -- dry pressing and pointing the gun in a direction where no one is at risk of any negligent discharge if that would ever happen. From there, after I pointed the gun in the direction of the -- of the window I pressed the trigger twice. There was nothing. The third time I pressed it that's when the gun went off."*¹³

*"I then after I did a quick check of the cylinder, I did see the cylinder is like - - I could see light through them and then that's when I -- I close it..."*¹⁴

The UOFRB conducted a thorough review in evaluating the circumstances and evidence related to the NTUD. The UOFRB noted that Officer Moreno took full responsibility for the incident during his interview with FID investigators and was cooperative with the responding personnel from the Anaheim Police Department. The UOFRB determined that the NTUD was the result of operator error. Officer Moreno failed to properly clear his revolver prior to conducting dry fire practice, placed his finger on the revolver's trigger, and pressed the trigger which caused a round to be discharged.

¹¹ Moreno, Page 18, Line 18 – Page 19, Line 1.

¹² *Id.*, Page 36, Lines 11-14 and Lines 18-20.

¹³ *Id.*, Page 14, Line 18 – Page 15, Line 13.

¹⁴ *Id.*, Page 17, Lines 21-24.

Upon reviewing the evidence, the Chief determined that the NTUD was the result of operator error and a failure to adhere to the Four Basic Firearm Safety Rules. Officer Moreno failed to clear his revolver properly and pressed the trigger of his loaded revolver while attempting to practice dry firing. Officer Moreno's action violated the Department's Basic Firearm Safety Rules, and therefore, requires a finding of Administrative Disapproval (AD), Negligent Discharge. The Chief will direct that this be a topic of discussion during the Tactical Debrief.

Note: To address the NTUD involving Officer Moreno, 77th Street Area initiated a personnel complaint against Officer Moreno.

Additional

- **Watch Commander's Daily Report (documentation)** - The 77th Street Patrol Division Watch Commander's Daily Report, dated August 17, 2019, did not document the times and information with regard to the separation and monitoring of Officer Moreno, nor did it indicate that a Categorical Use of Force had occurred. Captain Odle addressed this issue with Sergeant Plummer through divisional training. The Commanding Officer of Operations – South Bureau (OSB) and the Director of Office of Operations concurred with these actions. As such, the Chief deemed no further action is necessary.

Chief's Direction

- On January 15, 2020, the Department made available online to all personnel a video addressing unintentional discharges of firearms. Along with a message from the Chief of Police, the video from In-Service Training Division, Firearms Training Section demonstrated the safe handling of firearms and reviewed the Four Basic Firearms Safety Rules. This video was created to prevent unintentional discharges through the emphasis of the safe handling of firearms.

Audio/Video Recordings

- **Digital In-Car Video System (DICVS)/Body Worn Video (BWV)** – Officer Moreno's NTUD occurred while he was off-duty, therefore, no LAPD DICVS or BWV were deployed or activated during this incident.

Body Worn Videos from Anaheim Police Department personnel were reviewed and were consistent with the interviews.

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INSPECTOR GENERAL REVIEW

Inspector General Analysis

Investigation Quality

- No significant issues of concern were identified in relation to investigation quality.

Training Issues

- No significant issues of concern were identified in relation to training.

Equipment Issues

- No significant issues of concern were identified in relation to equipment.

Detention

- Does not apply.

Tactical De-escalation

- Does not apply.

BWV and DICVS Policy Compliance

SERIAL	NAME	TIMELY BWV ACTIVATION	FULL 2- MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICVS ACTIVATION	DICVS RECORDING OF ENTIRE INCIDENT
43614	Moreno, Jonathan	N/A	N/A	N/A	N/A	N/A

Inspector General Recommendations

Tactics

- The OIG concurs with the Chief's findings.

Drawing/Exhibiting

- Does not apply.

Unintentional Discharge

- The OIG concurs with the Chief's findings.

A handwritten signature in cursive script, appearing to read "M. P. Smith".

Mark P. Smith
Inspector General